

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 451(Asr)/2017
Assessment Year: 2012-13
PAN: CVIPS 5218R

Sh. Varinder Kumar Soul
209-New Jawahar Nagar,
Jalandhar.
(Appellant)

Vs. Income Tax Officer,
Ward-3(2),
Jalandhar.
(Respondent)

Appellant by : Sh. Ashray Sarna (C.A.)

Respondent by: Sh. Ghulam Mustafa (D. R.)

Date of Hearing: 18.12.2017

Date of Pronouncement: 16.01.2018

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the Order by the Commissioner of Income Tax (Appeals)-2, Jalandhar ('CIT(A)' for short) dated 03.05.2017, dismissing the assessee's appeal contesting his assessment u/s. 143(3) read with section 147 of the Income Tax ('the' Act hereinafter) for Assessment Year (A.Y.) 2012-13.

2. Vide the instant appeal the assessee raises the following grounds:

- '1. That the order passed by the worthy CIT(A), Jalandhar, dated 03.05.2017 is against the law and facts of the case.
2. That the order passed by the worthy CIT(A), Jalandhar is erred in law in upheld the order passed by the Assessing Officer ignoring the facts that assessee is non-resident Indian and he was unable to produce the purchaser in

his absence but he filed copy of agreement to prove the sources of cash deposit.

3. That assessee request to add or amend any ground of appeal before the appeal is finally heard and disposed off.'

Opening the arguments for and on behalf of the assessee, it was submitted by the Id. Authorized Representative (AR), his counsel, with reference to the reasons recorded u/s 148(2), adducing a copy thereof, that the assessee's challenge is to the reopening of assessment on the ground of the validity of the reasons recorded, which read as under:

'Reasons for issue of notice u/s. 148

The assessee Sh. Varinder Kumar filed its return of income on 4.5.2012 for the assessment year 2012-13 declaring an income of Rs. 98000/- as rental income and Rs. 86850/- as income from interest. The bank statement of the assessee has been called for and it has been noticed that the assessee is receiving Rs. 34725 per month total 416700/- when he has shown Rs. 98000/-. Thus the rental income of Rs. 193690/- has escaped assessment. Further the assessee has cash deposits amounting to Rs. 3100000/- during the year, the same needs verification, source of cash deposits.

I have therefore reasons to believe that by reasons of the failure on the part of the assessee to disclose fully and truly all the material facts required for his assessment has escaped assessment to the tune of Rs. 3293690/- for the assessment year 2012-13.

Issue notice u/s. 148 of the I.T. Act 1961.'

Observing no specific ground in this respect, the Bench, after ascertaining if the Id. Departmental Representative (DR) had any valid or serious objection thereto, allowed the Id. AR to plead the said ground orally in pursuance of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963. In-as-much as the Assessing Officer (AO), the Id. AR would continue, only seeks to verify the source of the cash deposits in the assessee's bank account (with Bank of India), it is plain that he

entertains no reason to believe escapement of income from assessment in respect of the said deposits. The Id. DR would object, stating that even ignoring the said reason, there is a valid assumption of jurisdiction u/s. 147 of the Act to reassess by the AO on the basis of first reason alone, i.e., the under-disclosure of rental income; the assessee admitting during the course of assessment proceedings a gross rental receipt of Rs. 3,85,830/- as against Rs. 98,000/- per the return filed u/s. 139 as well as that in response to notice u/s. 148, referring to page 2 of the assessment order. Once assessment is reopened for reassessment, it was open for the AO to examine any other aspect of assessment indicating under-assessment of any income that comes to his notice, adverting to s. 147 of the Act.

3. We have heard the parties, and perused the material on record.

True, verification of the nature and source of a receipt, and on that basis ascertaining the assessability, if any, thereof as income under the Act, could not constitute a valid reason to believe escapement of income from assessment. This is as there is thereby an admission, even if tacit, that there is no basis with the Revenue to believe that the receipt is in the nature of income, which would depend on the result of the verification sought to be undertaken. The condition precedent for reassessment is not 'reason to suspect', but 'reason to believe', which is a more stringent condition and mandates the formation of belief on the strength of information or material in the possession of the Revenue leading to the said reason (refer: *CIT v. Lakhmani Mewal Das* [1976] 103ITR 437 (SC)). Section 143(2), per which the law provides for the said verification, and sec. 147, operate in different fields, even as explained in *Vipan Khanna v. CIT* [2002] 255 ITR 220 (P&H).

Be that as it may, there is equally no doubt that the AO had a valid reason to believe escapement from assessment *qua* rental income. The same is sufficient for him to assume jurisdiction to reopen the assessment u/s. 147. No contention in its

respect in fact stands raised before us. Rather, could not be inasmuch as the assessee, after failing to disclose any additional income per the return in pursuance to notice u/s. 148, offers additional rental income (at Rs.385,830 - which, as it appears, should be Rs. 416700/-) by filing a 'revised' computation of income during the reassessment proceedings. In other words, there is an admission as to escapement of income *qua* the first reason stated in the reasons to believe recorded by the AO. How could then, we wonder, the assessee question the validity of the reassessment proceedings? Why, how could, one may ask, a computation be furnished therein if the said proceedings were not valid proceedings? The assessee's case in this regard, in view of the admitted under assessment in the first instance (u/s. 143(1)) and, thus, validity of the first reason of the believe escapement of income from assessment, only needs to be stated to be rejected.

4. The only other ground that survives; Gd. 1 being general in nature, warranting no adjudication, is Ground 2. The assessee, in explanation of the nature and source of the cash deposits for Rs.31 lacs, filed (with the AO) a copy of the agreement for sale of his residential house, with one, Shri Mohinder Singh, clarifying that there was though no transfer u/s. 2(47)(v) inasmuch as the possession continues to be retained by the assessee. The assessee has been, we observe, subsequent to the issue of notice u/s. 148 on 11.02.2014, allowed several opportunities to produce the so-called 'buyer' of the property (who is stated to have paid the assessee Rs. 31 lacs in cash and, further, without taking possession of the subject property), including four times before the Assessing Officer, to whom the matter was remanded, paying heed to the several requests by the assessee to the Id. CIT(A) for the same, thrice, to no avail though (refer paras 4.3 thro' 4.10 of the impugned order). What is this, if not an abuse of the process of law? In fact, the assessee confirmed (through the Id. AR during hearing) *status quo* in the matter, i.e., of the

possession of his residential house continuing to be with the assessee even to date (18.12.2017). In other words, the assessee wants us to believe that someone gave him Rs.31 lacs in cash and disappeared! Why should cash at all be paid (i.e., instead of through the banking channel, exhibiting a *prima facie* money trail) and, as it appears, in different amounts – the reason recorded as well as the assessment order speaking of cash deposits totaling to Rs. 31 lacs, rather than being paid in lump sum? It is this cash, received in India, which is deposited in the assessee's bank account in India. Was the assessee, a non-resident, in India on each of those dates to accept cash, or even on the date the agreement is stated to be executed? Why would the 'payer' not take possession of the subject property, or otherwise steps to complete the transaction despite lapse of several years? Has the amount been forfeited? There is further nothing on record to exhibit the identity of the payer, much less his capacity, or the genuineness of the transaction, establishing the nature and source of the cash deposits, as required u/s 69/69A. There is, at any rate, complete non-substantiation of his case by the assessee. As explained in *CIT vs. P. Mohan Kala* [2007] 291 ITR 278 (SC), an explanation means a reasonable and acceptable explanation. The Apex Court in that case was considering the applicability of section 68, and its said observations were in the context of the meaning of the expression 'the assessee offers no explanation' (or one that is not satisfactory in the opinion of the Assessing Officer), which finds mention in section 69/69A as well.

Further still, though there is no rebuttal by the assessee, and even as the same represents a part of well-settled law, we may yet, for the sake of completeness of our order, before parting, state that the Assessing Officer is fully empowered in law to make the impugned addition in reassessment. The provision of sec. 147, coupled with third *proviso* thereto, reading as under, clarifies the matter:

'Income escaping assessment.

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and *also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section*, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided

Provided further.....

Provided also that the Assessing Officer may assess or reassess such income other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.'

(emphasis, ours)

In *CIT v. Sun Engineering Works Pvt. Ltd.* [1992] 198 ITR 297 (SC), the Hon'ble Apex Court clarified that the controversy in the reassessment proceedings is confined to matters which are relevant only in respect of income which had not been brought to tax during the course of the original assessment. The entire assessment is set at large and the total income is determined afresh once valid proceedings for reassessment are initiated, and jurisdiction for reassessment assumed. The only caveat is that concluded matters cannot be re-agitated, and the subject matter of the assessment is income that had escaped assessment earlier, and which is the only limitation to the words 'such income' occurring in sec.147. It is noteworthy that the assessment years involved in that case were AYs.1960-61 & 1961-62, for which the provision, since substituted by w.e.f. 1.4.1989, was, being differently worded, materially different, requiring the Hon'ble Court to examine and opine on the scope of the words 'such income'. The provision, as it presently stands, makes the foregoing abundantly clear per the main provision itself, with the

third *proviso* further setting out the limitation on the scope of the income/s that could be subject to assessment u/s.147. In the instant case, even if therefore the second 'reason' is discarded as not valid, the AO having assumed jurisdiction to reassess, the same would extend to all incomes that had escaped assessment, including the impugned income of Rs.31 lacs. Further still, *Explanation 3* to sec.147, inserted by Finance Act, 2009, w.r.f 1.4.1989, so that the same underscores the manner in which the provision is to be read since its inception, reads as under:

'Explanation 3- For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.'

As apparent, the same seeks to remove any iota of doubt in the matter that may have persisted or may be sought to be entertained, even as, to be fair, none was before us. Any issue *qua* an income that had escaped assessment could be examined even if the same does not find mention in the reasons recorded.

There is no dilation on or even argument *qua* the assessee's residential status at any stage, except in the context of the stated difficulty in producing the ostensible buyer. Further, even if a non-resident, income accruing or arising or received in India is taxable in India. In view of the foregoing, we, therefore, uphold the impugned addition. We decide accordingly.

6. In view of the above, the appeal filed by assessee is partly allowed.

Order pronounced in the open court on 16.01.2018

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Dated: 16.01.2018.

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Assessee: Varinder Kumar Soul
- (2) The Respondent
- (3) The CIT(A)-2, Jalandhar
- (4) The Pr. CIT-2, Jalandhar
- (5) The SR DR, I.T.A.T.,

True copy

By Order